

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3960 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MARADIA CHEMICALS LIMITED

Versus

STATE OF GUJARAT

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Appearance:

Mr Keyur Gandhi for NANAVATI ASSOCIATES for Petitioner

MR Anang Dave for Respondent No. 1

MR Anand Yagnik for Mr GIRISH PATEL for Respondent No. 3

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 25/11/98

ORAL ORDER

Heard the learned Advocates for the parties.

The challenge in the present Special Civil Application is the composite order dated 19.5.1997 issued by the second respondent-Deputy Secretary, Government of Gujarat, Labour & Employment Department, under section 10(1) of the Industrial Disputes Act referring the dispute mentioned in the schedule to the Labour Court for

adjudication and simultaneously prohibiting the continuance of lockout under section 10(3) of the Industrial Disputes Act. The English translation of the reference as provided to the Court, is as follows:

"Whether the wages for the period until the lockout effected by the establishment with effect from 7.2.1997 is lifted, is payable or not ?"

2. It is contended by Mr Keyur Gandhi, learned Advocate for the petitioner-Mardia Chemicals Ltd. that the reference forecloses and predetermines the issue whether there was a strike as contended by the petitioner or lockout as alleged by the workmen. In view of the decision of the Apex Court in the case of Delhi Cloth & General Mills v. Workmen, reported in AIR 1967 SC 469 it will not be open for the petitioner to contend that in fact there was no lockout and if it is not able to prove then obviously, the question of lifting would not arise. The learned Advocate also placed reliance on an unreported decision of this Court (Coram : Rajesh Balia, J.) rendered in Special Civil Application No.5334/94 dated 17.1.1995. It is held therein that where a reference is founded on the premises that there was a lockout on a particular date, it is not open for the management to contend in that reference that there was no such lock out declared by it.

3. The Learned Advocate further submits that there was a large scale disturbance created by the Union/employees whereby lives of the officers of the Company including their family members and the property of the company were endangered. In view of this, the workers were asked to furnish a good conduct bond. The learned Advocate placed reliance on a Division Bench decision of the Bombay High court in the case of Industrial Tubes Mfg.Co. v. S R Samant, reported in 1981 LAB.I.C. 379, wherein it is held that preventing the workmen from joining duties without executing good conduct bond does not amount to lockout. On the other hand, Mr Anand Yagnik, learned Advocate submits that the declaration of lockout is admitted by the management. He also submits that in the instant case, the proforma which was furnished by the management is not simply asking for furnishing a good conduct bond but in fact they have asked to condemn their own activities. The learned Advocate also placed reliance on a Division Bench decision of this Court in the case of Swastik Textile Engineers Pvt.Ltd. v. Rajensingh reported in 25 (1) GLR 470, wherein it is held that the management has no right or authority to demand a bond asking the workmen not to

participate in strike in future, to seek pardon for having participated in the illegal strike and to state that the employees may impose any penalty on them. An affidavit has also been filed by one Mr Laxmanbhai Patanvadia. It is stated therein that the workers of the petitioner-company submitted a charter of demands dated 10.11.1996. The petitioner company refused to accept it. The Union also submitted the general demands of the workers to the management on 25.12.1996. The management assured that they would try to resolve the problems of the workers through negotiations, but the petitioner company did not show any interest. It is further stated that in fact the company was interested in creating the situation whereby the company may declare lockout and justify it. It is further stated that the company put up notice on 6.2.1997 declaring lockout in the company and asked the workers to get out of the premises. Thus, the Union approached the Labour Commissioner on 11.2.1997 by writing letter. The Company was required to remain present in the meeting called by the Labour Commissioner, but they did not care to remain present and has made allegations in the petition that the Company's personnel could attend the meeting because of the labour situation. It is further stated that the Labour Commissioner made his efforts to settle the dispute but the company was adamant to ask for undertaking, the terms of which was in violation of the workers' right, and therefore, the same was not accepted by the workers. It is further stated that the workers submitted another form of undertaking, but the company did not accept it and insisted upon an undertaking which is by way of confession and humiliating in the name of this undertaking. It is also stated that the Company, has clearly admitted that it had declared lockout and laid down conditions for withdrawing the lockout.

4. I have heard the learned Advocates for the parties and also carefully gone through the decision of the Apex Court in the case of Delhi Cloth Mills (supra) and also the unreported decision referred to above. It is held therein that the Tribunal must confine its decision only to the question whether the strike and lockout was legal and justified or not, but it cannot enlarge the scope of its jurisdiction and decide that there was no strike or lockout. Thus if following two questions are sought to be raised before the Labour court, in the present context, namely ;

- (i) Whether there was a lockout declared by the management ?

(ii) Whether the Management was justified in  
declaring the lockout ?

My answer is in complete agreement with the learned Advocate for the petitioner that it will not be open for the Labour Court to decide the question whether the lockout was declared by the management. So far as the second question is concerned, within the term of reference, the Labour court can go into the question if the Management was justified in declaring the lockout. Now the question arises as to whether the State Government was right in making reference on the premises that there existed lockout ? The case of the workmen is that the lockout is admitted by the management. In order to find out whether the petitioner management has admitted the lockout or not, it will be convenient to read the pleadings of the petitioner. A part of the pleading from paras 4, 11 & 15 of the writ petition are extracted as follows:

Para 4

"The Vatva plant is lying closed since 7.2.1997  
in view of the lockout declared by the  
management."

Para 11

"whereby the lives of the officers of the company  
including their family members and the property  
of the company were endangered. Since the  
situation went beyond the control of the  
management, it was obliged to declare a lockout  
with effect from 6.2.1997. On and from 6.2.1997,  
the factory is lying closed. As stated  
hereinabove, the petitioner company was obliged  
to declare lockout with effect from 6.2.1997.  
Vide the said notice, the workers were asked to  
give undertaking as per the proforma annexed to  
the said notice for not resorting to illegal  
activities such as terrorizing and threatening,  
and not creating disturbances during the working  
of the factory."

Para 15

"Before effecting the lockout, the petitioner  
management made all attempts to see that the  
situation becomes normal.

xxx

xxx

xxx

The petition is supported by an affidavit of one Mr Mahendrabhai Joshi, Factory Manager of the petitioner-Company. He has stated that the averments

made in the aforesaid paras 4, 11 & 15 are true to the best of his knowledge. In a letter dated 27.2.97 addressed to the Secretary, Labour Department, Sachivalaya, Gandhinagar at page 53 of the paper book, it is stated that "under the circumstances aforesaid, the management was obliged to declare lockout vide its notice dated 6th February 1997 asking the workers/union to give undertaking to the management that each one of the workman would henceforth work in a disciplined manner and maintain industrial peace."

5. Mr Keyur Gandhi, learned Advocate submits that a reading of the notice dated 6.2.1997 will show that it was a notice for lockout and in fact there was no lockout. I am unable to agree with Mr Gandhi, in view of a clear admission made on oath before this Court and before the Secretary, Labour Court. There is a clear admission of the petitioner management before the State Government that they were obliged to declare lockout. Thus, no fault can be found with the State Government, in making reference on the premises that the petitioner had declared the lockout. In fact, the Management did not appear before the Conciliation Officer on the pretext that on account of the activities of the Union, it was not safe to appear. The petitioner-management considered to approach all the high-ups in the Government i.e. Ministers and Secretaries, but did not prefer to appear before the Conciliation Officer. The management even unsuccessfully sought directions from the high-ups to the Labour Commissioner not to make the reference. The sort of language used by the management for the Trade Union i.e. 'Mafia union' and 'rowdy workers' speaks in volume of their attitude towards the Trade Union activities and the workers.

6. Dealing with the contention that preventing the workmen from joining duties without executing good conduct bond does not amount to lockout, while there can be no dispute to this proposition but in the guise of undertaking or bond, the management cannot ask the workmen to condemn themselves or to condemn the rightful activities of the Trade Union. Division Bench of this Court in the case of Swastik Textile Engineers (supra), reported in 25(1) GLR 479, has held that the management has no right or authority to demand in writing to seek pardon for having participated in the illegal strike and to state that the employees may impose any penalty. It must be clearly understood that every human being has right to live with self-respect and dignity.

7. In view of the clear admission of the management

with respect to the declaration of lockout the question whether there was a lockout or not does not arise before the Labour Court.

8. It is next contended by the learned Advocate for the petitioner that the State Government has committed error in invoking provisions of Section 10(3) of the Industrial Disputes Act. The learned Advocate relying on a decision of the Apex Court in the case of Delhi Administration vs. Workmen, reported in AIR 1978 SC 976 submits that before an appropriate Government can pass an order under section 10(3) prohibiting a strike two conditions must exist, that is there must be an industrial dispute in existence and secondly such dispute must have been already referred for adjudication. I have read the said judgment. It is just converse judgment. It was a case of strike. At the instance of the management, the strike was prohibited under section 10(3). Be that as it may, in the instant case, both the conditions are satisfied, inasmuch as that there existed an industrial dispute and that dispute has been referred for adjudication. It is of course true that the petitioner management has tried to say that the dispute with respect to strike has not been referred. In fact such a dispute has never been raised by the management. The dispute was raised by the workers with respect to the lockout and the same has been referred for adjudication. In view of this, there is no substance in this contention as well.

8. Consequently, there being no merit in this Special Civil Application and the same is summarily rejected. Notice discharged. Interim relief stands vacated.

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msp.